

ORIGINAL

Before the
Federal Communications Commission
Washington, D.C. 20554

RECEIVED

OCT 19 1999

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Application by New York Telephone)
Company (d/b/a Bell Atlantic - New York),)
Bell Atlantic Communications, Inc.,)
NYNEX Long Distance Company,)
and Bell Atlantic Global Networks, Inc.,)
for Authorization To Provide In-Region,)
InterLATA Services in New York)

CC Docket No. 99-295

COMMENTS OF ADELPHIA BUSINESS SOLUTIONS

Hyperion Telecommunications, Inc. d/b/a Adelphia Business Solutions ("Adelphia") respectfully submits these comments to oppose Bell Atlantic's Application in the above-captioned matter. The careful processes leading up to this docket – and the market entry of facilities-based CLECs like Adelphia – demonstrate that the Communications Act of 1934, as amended ("Act"), is operating exactly as it should to promote competitive telecommunications alternatives for U.S. consumers. Indeed, Bell Atlantic's bid to provide in-region interLATA services in New York has focused a myriad of issues about how incumbent carriers that steward the public switched network must accommodate customers who want to benefit from competitive offerings like Adelphia's (that rely in part on that same network). Unfortunately, as the attached Affidavit demonstrates, Bell Atlantic has continued to impose obstacles and delays and threaten Adelphia customers -- *even in the last few months* -- making it difficult for Adelphia to transact business with certainty and reliability. Local competition requires Bell Atlantic's cooperation.

No. of Copies rec'd
List ABOVE

076

Until the difficulties that Bell Atlantic interposes in competitive offerings subside, Adelphia urges that the Commission reject the Application and, in any case, consider strong measures to protect against both Bell Atlantic's continuing intransigence and the possibility that the market opening process is reversed.

Adelphia is committed to providing competitive services over its state-of-the-art network, which currently connects local networks in Albany, Buffalo, and Syracuse. (Affidavit, ¶¶) As a transition strategy to expand the reach of its current networks, and as a market entry strategy, Adelphia also resells Bell Atlantic services. However, no business can operate if its customers cannot take comfort in advance commitments to start service and keep it reliable. Adelphia has no choice but to rely on Bell Atlantic (and its representations) during the cut over and repair process. With Bell Atlantic's poor track record, however, Adelphia cannot adequately utilize its facilities, market its services, or meet the expectations that telecommunications customers deserve.

Carriers like Adelphia have a great deal more to fear from dissatisfied customers than does Bell Atlantic. Because of the possibility of a mishap during a cut over that would cause one or more lines to stop working, customers have a natural hesitation to switch local carriers. In particular, businesses, which expect total reliability in their telephone lines as a primary means to collect, communicate with and respond to customers, are intolerant of anything less than the flawless functioning of their telephone lines.

When Adelphia service starts have gone awry (in a significant number of cases over the past few months), Bell Atlantic has rendered Adelphia helpless to address the situation. *Affidavit of Janet S. Livengood, Esq., hereafter "Affidavit,"* ¶¶ 6-20. Adelphia customers have been forced

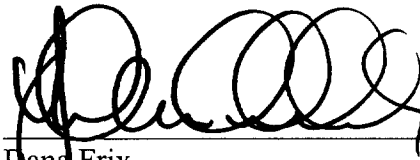
to postpone moves and grand openings (*Affidavit*, ¶¶ 6-9, 16), endure failed remote call forwarding and disconnections (*Affidavit*, ¶¶ 9-14, 18-19), and have been caught blind-sighted when Bell Atlantic has not met promised due dates (*Affidavit*, ¶¶ 7-9, 12-15, 17, 18). When normal rainfall (*Affidavit*, ¶ 19) or other factors (including Bell Atlantic billing mistakes (*Affidavit*, ¶18) have caused service outage, restoration is delayed interminably. *Affidavit*, ¶¶ 9, 12, 18, 19. Adelphia is relegated to fits and starts in its efforts to reach the appropriate contact person at Bell Atlantic with any degree of urgency. *Affidavit*, ¶¶ 7-14. Numerous voice mails, messages, and escalations are required to breach the Bell Atlantic levy. *Affidavit*, ¶¶ 7-14, 20. Even reaching a live voice holds no necessary promise. *Affidavit*, ¶¶ 7-14, 16.

Amid the difficult circumstances that Bell Atlantic has put in place, carriers such as Adelphia have to overcome considerable obstacles to gain and retain customers. Potential customers who hear of lengthy outages and confusion immediately raise their guard to competitive offerings when, ironically, it is Bell Atlantic that is the root of the problem. Or, in more measurable terms, Bell Atlantic may threaten a CLEC client, holding services until the client agrees not to use a competitor. *Affidavit*, ¶ 5. Moreover, even against odds as a CLEC's offerings are, Bell Atlantic will hear nothing of helping a CLEC to accommodate a new customer. *Affidavit*, ¶¶ 6-13, 16.

As Bell Atlantic has tried to suggest, its track record may be improving in certain respects. But this showing has done very little to curb the day-to-day stumbling blocks identified by Adelphia that clutter the path toward the Act's success. Adelphia submits that the Commission take this opportunity to be firm in support of proper compliance with Section 271's Competitive Checklist. Bell Atlantic's misbehavior in New York deserves further scrutiny.

Concrete measures to address the hurdles that Bell Atlantic has continued to erect are in order, as are continued incentives and well-defined and stringent penalties to ensure that Bell Atlantic does not backslide. Bell Atlantic will be a model in New York for carriers nationwide. But such an example should be one in which customers can expect a viable choice of carriers.

Respectfully submitted,



Janet S. Livengood, Esq.
Director of Legal and Regulatory Affairs
HYPERION TELECOMMUNICATIONS, INC. D/B/A
ADELPHIA BUSINESS SOLUTIONS
500 Thomas St., Suite 400
Bridgeville, Pennsylvania 15017-2838
Tel.: (412) 221-1888
Fax: (412) 220-5162

Dana Frix
Jonathan D. Draluck
SWIDLER BERLIN SHEREFF FRIEDMAN, LLP
3000 K St., NW, Suite 300
Washington, D.C. 20007-5116
Tel.: (202) 424-7500
Fax: (202) 424-7645

Counsel for
Hyperion Telecommunications, Inc. d/b/a
Adelphia Business Solutions

Date: October 19, 1999

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of

Application by New York Telephone)	
Company (d/b/a Bell Atlantic - New York),)	
Bell Atlantic Communications, Inc.,)	CC Docket No. 99-295
NYNEX Long Distance Company,)	
and Bell Atlantic Global Networks, Inc.,)	
for Authorization To Provide In-Region,)	
InterLATA Services in New York)	

**AFFIDAVIT OF JANET S. LIVENGOOD, ESQ. ON BEHALF OF
ADELPHIA BUSINESS SOLUTIONS**

COMMONWEALTH OF PENNSYLVANIA)	
)	ss:
COUNTY OF ALLEGHENY)	

Janet S. Livengood, being duly sworn upon oath, deposes and states as follows:

1. I am Director of Legal and Regulatory Affairs for Hyperion Telecommunications, Inc.
d/b/a Adelphia Business Solutions ("Adelphia"), a competitive telecommunications
company whose subsidiaries operate fiber optic networks in Albany, Buffalo, and
Syracuse among its 43 other local networks. One of my areas of responsibility includes
relations with incumbent local exchange carriers.
2. Having already built over 10,000 miles of its 33,000 mile local and long-haul fiber optic
network, Adelphia's business plan is to minimize its reliance on incumbent carriers like
Bell Atlantic - New York ("Bell Atlantic"). However, without Bell Atlantic's

*Affidavit of Janet S. Livengood, Esq.
Adelphia Business Solutions*

cooperation, especially during the period that Adelphia expands its product offerings and customer base, Adelphia cannot successfully offer competitive services.

3. I am submitting this Affidavit to demonstrate the obstacles that Bell Atlantic has continued to impose over the past few months. Bell Atlantic's actions (or inaction) have strained Adelphia's ability to provision new competitive services and thus build good will with its new and existing customers.
4. Specifically, this Affidavit addresses the topics identified in the following headings:
 - Bell Atlantic Has Threatened Adelphia Customers
 - September 1999 Grand Opening Delayed in Syracuse
 - Syracuse Customer Moved August 1999 Without New Telephone Service
 - Bell Atlantic Otherwise Impedes Adelphia's Ability to Be Reliable to New Customers
 - Bell Atlantic Continue to Make It Difficult for Adelphia To Serve Its Current Customers

Bell Atlantic Has Threatened Adelphia Customers

5. Bell Atlantic contacted the City of Buffalo, formerly an Adelphia resale customer. According to Adelphia's contact at the City, Bell Atlantic informed the City that the City would be unable to receive additional Bell Atlantic services unless it canceled its account with Adelphia, which it did.

September 1999 Grand Opening Delayed in Syracuse

6. Due to repeated and unexplained Bell Atlantic delays, an Adelphia customer in Syracuse postponed its Grand Opening and, on the new Grand Opening date, only had two of the five lines it needed to be installed. Using Bell Atlantic's Graphic User Interface ("GUI"), on August 20, 1999, Adelphia ordered five lines to be used on a resale basis, with a

*Affidavit of Janet S. Livengood, Esq.
Adelphia Business Solutions*

requested due date of September 1, 1999 (Order SYRCS000CELL). The order was not complete until October 4, 1999.

7. Following the initial order, and despite numerous unsuccessful attempts and telephone calls to check the status of the order, Adelphia did not learn until September 1, 1999, that Bell Atlantic would not fill the order. On that day, the GUI reflected a Firm Order Confirmation ("FOC") for September 9, 1999. No work was completed on that date. On September 10, 1999, Adelphia learned of a new FOC installation date -- September 17, 1999. Adelphia personnel escalated the matter and received a new FOC of September 13, 1999.
8. On September 14, 1999, the GUI reflected that the order in question was in "jeopardy." Again, Adelphia personnel left messages for Bell Atlantic personnel and were assured that such personnel would check into the matter. The next day, Bell Atlantic claimed that there was a facilities problem which both prevented installation on September 13, 1999 and enabled Bell Atlantic to delay the order by ten days. On September 15, 1999, Bell Atlantic personnel contacted Adelphia to indicate that the work was in progress. It was not.
9. While the postponed Grand Opening was in progress, on September 20, 1999, Adelphia's customer called extremely upset and reported that three of the five ordered lines were not working. After several telephone calls, Bell Atlantic reported that the installers had been taken off the project because of Hurricane Floyd, a storm that did not hit Syracuse and an excuse that puzzled some Bell Atlantic personnel. Once the lines had been completed on

September 21, 1999, it took another 13 days and innumerable follow-up calls and voice mail to change the GUI status to "successful," thus paving the way for Bell Atlantic finally to implement the Call Forward Variable feature and thereby complete the order.

Syracuse Customer Moved August 1999 Without New Telephone Service

10. Despite leaving telephone messages and requesting escalation, Adelphia experienced inexcusable unresponsiveness in attempting to move ten resale lines for a Syracuse business customer. As a result, the customer moved to a new location without any service (except for the three cell telephones that Adelphia provided as a courtesy).
11. After Adelphia placed the order on August 9, 1999, Bell Atlantic confirmed it (T2DU5922) and informed Adelphia that there would be no problem meeting an August 27, 1999 due date. Over the next two weeks, however, Bell Atlantic could not or would not provide a firm due date.
12. On August 27, 1999, the customer moved. Adelphia requested that Bell Atlantic forward calls to the cell phones that Adelphia provided. After a number of escalation attempts and, finally, an escalation, Bell Atlantic reported that forwarding was successfully implemented. The next day, however, the telephone was ringing at the old site. Adelphia purchased an answering machine to install at the old site to provide callers with the new telephone number. The next day, all lines were out of service. Adelphia encountered the usual difficulty in reaching personnel at Bell Atlantic (unreturned calls, long holds, the wrong person).

13. On Wednesday, September 1, 1999, the lines were finally installed – but only after the Bell Atlantic technician indicated that the lines would not be programmed until the following day, necessitating additional follow up with Bell Atlantic.

Bell Atlantic Otherwise Impedes Adelphia's Ability to Be Reliable to New Customers

14. Jeopardy Notices. Too frequently, Bell Atlantic invokes what have come to be standard excuses in failing to deliver. It claims that it is unable to install services due to, among other reasons, crushed conduit and lack of facilities multiplexing and repeaters. Adelphia may be forced to rely on Bell Atlantic's assessment of delaying factors. The degree of monitoring and regulatory supervision otherwise required would be untenable. However, as Adelphia managers have pleaded so often, one aspect of ordering should be non-negotiable: if Bell Atlantic is going to miss a promised due date, it should report to Adelphia as soon as it knows this information, so that Adelphia can address and resolve the situation with its new customers.
15. Missed FOCs. On more than 50 occasions since March, 1999, Bell Atlantic has missed its own FOCs for Adelphia orders of unbundled network elements and special access lines.
16. Winning New Accounts. Adelphia is hamstrung in its efforts to cultivate competitively advantageous relationships. Adelphia has committed significant resources to accommodate a flagship customer, with multiple locations, as that customer grows and moves. Adelphia ordered one set of lines six weeks in advance. Even after Bell Atlantic lost an order for two weeks (#C1WL2183) and the customer postponed its move, Bell

Atlantic would not deviate from the expansive build-out time requirements it claimed. It promised installation on a date ten weeks after the original order.

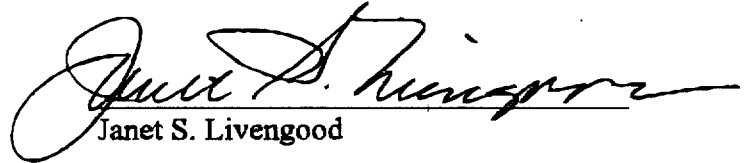
Bell Atlantic Continues to Make It Difficult for Adelphia To Serve Its Current Customers

17. Bell Atlantic frequently activates number portability prematurely. In this situation a customer's line is effectively shut off. In particular, new Adelphia customers cannot be reached by their clients, and such Adelphia customers will and do quickly wonder whether it is prudent to move forward with a scheduled change to Adelphia.
18. After lines that Bell Atlantic resells to Adelphia are "cut over," Bell Atlantic has continued to bill the new Adelphia client for services. As part of the problem "resolution," however, Bell Atlantic disconnects all incoming calls to the client's location.
19. Heavy rain causes the T-1 lines that Bell Atlantic has provisioned over copper facilities to go dead. Last month, a customer in the Town of Clarence Parks waited more than two days for Bell Atlantic to restore such a line.
20. As briefly described in Paragraphs 7 - 13, above, Adelphia personnel often find themselves in Bell Atlantic's "voice mail hell" – unable to reach a live person. Once a person is reached, however, it is often the wrong person. Even when customers have no service, Bell Atlantic does not cure this unending maze.
21. This concludes my Affidavit.


* * *

*Affidavit of Janet S. Livengood, Esq.
Adelphia Business Solutions*

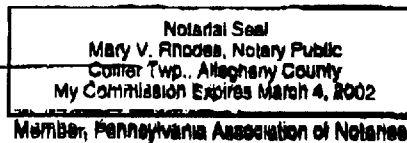
I swear under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.


Janet S. Livengood

Sworn to before me this 19th
day of October, 1999


Notary Public

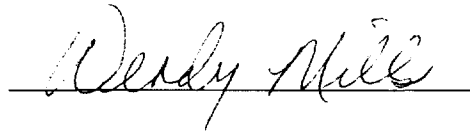
My Commission expires _____



*Affidavit of Janet S. Livengood, Esq.
Adelphia Business Solutions*

Certificate of Service

I certify that on October 19, 1999, I caused to be delivered to the following parties, by courier or overnight delivery, in the quantities indicated, true and correct copies of the Comments of Adelpia Business Solutions in CC Docket No. 99-295, Application by New York Telephone Company (d/b/a Bell Atlantic - New York), Bell Atlantic Communications, Inc., NYNEX Long Distance Company, and Bell Atlantic Global Networks, Inc., for Authorization To Provide In-Region, InterLATA Services in New York.



Via Courier:

Magalie Roman Salas, Secretary
Office of the Secretary
Federal Communications Commission
Room TW-B-204
445 Twelfth Street, SW
Washington., DC 20554
**original, six copies, date-stamp copy,
diskette**

Janice Myles
Policy and Program Planning Division
Common Carrier Bureau
Federal Communications Commission
Room 5-C-327
445 Twelfth Street, SW
Washington, DC 20554
twelve copies

Leonard Barry
Department
1401 H St. NW, Suite 8000
Washington, DC 20005
(202) 305-1743 (phone)
one copy

ITS, Inc.
1231 20th Street, NW
Washington, DC 20036
one copy

Via Overnight Delivery:

Penny Rubin
New York Public Service Commission
Three Empire State Plaza
Albany, NY 12223-1350
twenty-five copies

Michael E. Glover
Leslie A. Vial
Edward Shakin
Bell Atlantic
1320 North Court House Road
Arlington, VA 22201
three copies

Randal S. Milch
Donald C. Rowe
William D. Smith
New York Telephone Company
d/b/a Bell Atlantic - New York
1095 Avenue of the Americas
New York, NY 10036
three copies